IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 27 OF 1983

Ganesh Raghunath Dhadphale,)
Trustee since deceased by his heirs :-)
1A) Shri D.Dhananjay Ganesh Dhadphale)
1B) Shri Anand Ganesh Dhadphale)
Both are residing at 1206/40/A)
off Jangli Maharaj Road,)
Shivaji Nagar, Pune-411004)...Appellant
(Orig.Applicant)

V/s.

1) Deputy Charity Commissioner,)
(with Appellate powers) Maharashtra)
State, Worli, Bombay.)
)
2) Heramb Sakharam Dhadphale,)
)
3) Digambar Sakharam Dhadphale,)
)
4) Kamalakar @ Vasant Bhagwant Dhadphale)
since deceased by his heirs:)
4a) Dilip Vasant Dhadphale,)
R/at Pashan, Pune-8.)
)
5) Balkrishna Moreshwar Dhadphale,)
deceased by his heir Mrs.Radhabai)
Balkrishna Dhadphale,)
)
6) Damodar @ Sadashiv Anant Dhadphale,)
since deceased by his heirs,)
Smt.Vijaya Damodar @ Sadashiv)
Dhadphale,)
R/at. Pashan, Pune-8.)
)
7) Narayan Ganesh Dhadphale,)
)
8) Dr.Balchandra Ganesh Dhadphale,)
)
9) C.H. Joshi)...Respondents
(Orig.Respondents)

Mr.M.L. Patil for the Appellant.
Mr.V.S. Gokhale for Respondent Nos.2,3,4,7 and 8.
Mr.Bharat Mehta, AGP for Respondent No.1.

WITH

FIRST APPEAL NO. 120 OF 1983

1. Shri Haramb Sakharam Dhadphale,)
)
2. Shri Digambar Sakharam Dhadphale,)
)
3. Shri Vasant Bhagwant Dhadphale,)
since deceased by his LRs.,)
3a) Shri Dilip Vasant Dhadphale,)
age adult, Occ.Service,)
R/o. Pashan, Pune-8)
)
4. Balkrishna Moreshwar Dhadphale,)
since deceased by his heir)
Radhabai w/o. Balkrishna Dhadphale,)
)
5. Shri Sadashiv Anant Dhadphale,)
since deceased by his LRs.)
5a. Smt.Vijaya Sadashiv Dhadphale,)
adult, Occ.Household,)
R/o. Pashan, Pune-8.)
)
All residing at Pashan, Poone-8.)...Appellants
(Orig.Applicants)

V/s.

1. Charity Commissioner of the)
State of Maharashtra,)
Dharmadhaya Ayukt Bhavan,)
3rd floor, 83, Annie Besant Road,)
Worli, Bombay -18,)
)
2. Ganesh Raghunath Dhadphale,)
aged about 73 years,)
Occupation : Medical Practitioner,)
residing at 685, Budhwar Peth,)
Pune-2.)
since deceased by his legal heirs)
2a) Shri Dhananjay Ganesh Dhadaphale)
aged about 53 years.)
2b) Shri Anand Ganesh Dhadphale,)
aged about 48 years,)
Both residing at 1206/40/A,)
Off. Jangli Maharaj Road,)
Shivaji Nagar, Pune-411 004.)

(Orig.Opponents)

Mr.V.S. Gokhale for the Appellants.
Mr.Bharat Mehta, AGP for Respondent No.1.

CORAM : V.M. KANADE, J.

DATED : AUGUST 30, 2007

ORAL JUDGMENT :-

. Both the appeals can be disposed of by a common order since the appellants in both these appeals are challenging the judgment and order passed by the 4th Assistant Judge, Pune, who has by his judgment and order dismissed the Misc.Application No.61/76 and Misc.Application No.79/76 and upheld the order passed by the Charity Commissioner who had by his order under Section 50(A) framed a scheme in respect of the trust known as Shri Vakeshwar and Shri Vithal Devasthan. Brief facts which are relevant for the purpose of deciding these appeals are as under :-

2. Shri Wakeshwar and Shri Vithal Devasthan are the deities having two separate temples situated at Pashan, Pune. Initially, by virtue of an Inam which was created in favour of the appellant on 9.5.1769, the said temple alongwith deities and the adjoining land was given in

Inam with the avowed object of worshiping the said deities and performing the religious ceremonies of the said deities. Even exemption was granted on payment of land revenue. It was further categorically stated that the inam was hereditary in character. The said Devasthan was later on registered as a Public Trust under the provisions of the Bombay Public Trust Act in the year 1955 and it is an admitted position that the trust owns and possesses the agricultural land. It appears that after recommendation was made by the Assistant Commissioner that a scheme should be granted, the said report was considered by the Charity Commissioner suo motu for the purpose of framing a scheme and accordingly, a scheme was framed by the Charity Commissioner wherein inter-alia it was held that it was not proper to confine the trusteeship to only one family and therefore, the other members belonging to Hindu community, if found fit, should also be eligible to become the trustees of the said trust and therefore, he changed the mode of hereditary succession and passed the impugned order and directed that the scheme should be, accordingly, brought into force. He also further

held that the trust should also spend certain amount of income which was received by them for the purpose of education. Being aggrieved by the said order, the appellants preferred Misc.Applications before the 4th Assistant Judge, Pune, who dismissed the said applications and being aggrieved by the aforesaid order, the appellants have preferred these appeals as directed under Section 72 of the Bombay Public Trust Act, 1948.

3. The learned Counsel for the appellants, Shri M.L. Patil and Shri V.S. Gokhale, submitted that no complaint has been received in respect of the management of the trust and no irregularity was noticed even by the Charity Commissioner in the functioning of the said trust and as such, it was not necessary to exercise the discretion vested in the Charity Commissioner under Section 50(A) of the said Act for the purpose of framing a scheme. He fairly conceded that the Charity Commissioner had an authority under Section 50(A) to frame a scheme if it was found that it was necessary and expedient to do so. He submitted that however, in this case, since no complaint had been received, there was no

reason to frame a scheme and that the sanad whereby the Inam was created itself clearly and categorically had laid down the purpose and object of the said trust. He then submitted that since in the Inam, it was specifically mentioned that the trustees would be appointed from the said family, there was no occasion for the Charity Commissioner to change the hereditary mode of succession. In support of the said submission, he relied on the judgment of the learned Single Judge of this Court in the case of **R.P. Kapoor and Ors. V/s. The Charity Commissioner, Maharashtra State and Ors., reported in AIR 1989 Bom 274.**

4. Shri Mehta, learned Counsel appearing on behalf of the Government, on the other hand, invited my attention to para 6 of the said order wherein the lower Court had recorded that both the appellants had filed a joint pursis stating therein that they had no objection to the framing of the scheme in the interest of the trust so as to regular its trust. He submitted that that being the position, the appellants were precluded from raising any objection to the scheme which was

formulated by the Charity Commissioner while exercising the power vested in him under Section 50(A) of the said Act. He submitted that since the power was specifically vested with the Charity Commissioner and he having exercised the said power for the purpose and benefit of the proper management of the trust, there was no reason set aside or interfere with the finding recorded by the lower court. He invited my attention to the finding recorded by the lower court and particularly, the observation made by the lower court where it had confirmed the view expressed by the Charity Commissioner wherein he had stated it was not proper to confine the trusteeship to only one family and that number of trustees, therefore, should be increased.

5. After having given my anxious consideration to the submissions made by the learned Counsel for the appellants and the respondents, I am of the view that the Charity Commissioner as also lower Court clearly erred in framing a scheme and making two changes in the said scheme in respect of the mode of hereditary succession and the direction to the trust directing to

spend some amount on education. There cannot be any manner of doubt that under Section 50(A) of the said Act, power is vested in the Charity Commissioner to frame a scheme. In the present case, the Devasthan is almost 300 years old and it is an admitted position that it is functioning efficiently and no grievance has been made regarding mismanagement of the said Devasthan. No complaints have been received by anyone regarding the management of the Devasthan. That being the position, in my view, the Charity Commissioner ought not have framed the scheme of changing the hereditary mode of succession. Further on examining the sanad wherein the land alongwith temple and deities were entrusted to the family of the appellants, the object of creating the said Inam was clearly mentioned and it was for the purpose of worshipping the deities and to ensure that the expenditure which is incurred for the purpose of maintenance of the temple and performing the religious ceremonies in the temple is taken care of from the property which was given in Inam to the said family. That being the sole object, at this stage, it was not for the Charity Commissioner to change the said object

and direct the trust to spend money on education. In my view, the submission of the appellants will have to be accepted. This Court in the case of **R.P. Kapoor (supra)** has observed that the Charity Commissioner has to examine whether it is necessary and expedient and in the interest of the trust to settle a scheme and whether it is necessary to appoint additional trustees. In the present case, in the absence of any complaint, in my view, it was not necessary for the Charity Commissioner to carry out the exercise and change the mode of hereditary succession. In my view, the ratio of the judgment on which reliance is placed by the learned Counsel for the appellants squarely applies to the facts of the present case. The Judgment passed under Section 50(A), therefore, is set aside and quashed. Applications filed by the appellants herein are allowed. First Appeal, accordingly, are allowed in the above terms.

6. It is clarified that it is always open for the Charity Commissioner to come to the conclusion that it is necessary and expedient to frame a scheme in the

event of subsequent events taking place and in the event of any complaint being received regarding the management of the trust to frame adequate scheme. It must be remembered that very often when outsiders are allowed to become the trustees, there is every possibility that income which is received from the members is likely to be flittered away for other purpose. In the absence of any material to show that income of the trust is used for the purpose other than that of maintaining the temple and performing the religious ceremonies, in my view, it was not necessary to frame a scheme.

. Both the appeals are allowed in the above terms.

(V.M. KANADE, J.)